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September 1955

OGC Has Reviewed

MEMORANDUM FOR: General Counsel

SUBJECT : Certain Aspects of the Amenability of WOC to the Federal Employees Compensation Act

1. You asked me to ascertain whether or not a person serving with this Agency in a WOC capacity is covered by the Federal Employees Compensation Act (39 Stat. 742, 5 U.S.C. 751 (1916)), as amended, and, if so, the basis upon which death benefits, if any, would be paid.

2. As to whether or not a WOC is covered by the Act. Section 103 of the 1949 amendments to the Compensation Act (P.L. 357, 81st Cong., 1st Sess. (1949)) provides, in relevant part, that the term employee includes:

> "(4) persons rendering personal services of a kind similar to those of civilian officers or employees of the United States to any department, independent establishment, or agency thereof (including instrumentalities of the United States wholly owned by it), without compensation or for nominal compensation, in any case in which acceptance or use of such services is authorized by an Act of Congress or in which provision is made by law for payment of the travel or other expenses of such person;"

This appears as section 40 of the Act. You will observe that there are certain conditions which must be fulfilled in order that a WOC may be covered by the Act. First, he must be rendering a personal service of a kind similar to (that) of civilian officers or employees of the United States. This particular phrase is given no attention in either the House Report on the bill (H. Rep. No. 729, 81st Cong., 1st Sess. (1949)) or the Senate Report (Senate Rep. No. 636, 81st Cong., 1st Sess. (1949)). On its face it would seem to indicate merely that the service rendered must be similar, and I emphasize the word similar, to services normally rendered by some full-time Government employee or employees. This interpretation has been checked with a Mr. Middleton, Deputy Director of the Bureau of Employees Compensation (Code 177, extenstion 1395). He agrees and also attributes no particular significance to the phrase other than the plain meaning of the language. Second, the use of the service must be authorized by an Act of Congress, or there must be some law authorizing the payment of the travel and other expenses of the person rendering the service. These alternative requirements are emphasized by the report and by Mr. Middleton. There is little doubt as to the statutory authority for the use of the services of a WOC by this Agency. It specifically is set out in section 303(a) in the National Security Act of 1947 (61 Stat. 496, 50 U.S.C. 401 (1947)), as amended, and is further derivable from section

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15 of P.L. 600 (P.L. 600, 79th Cong., 2nd Sess. (1946)). On the basis of the foregoing, I would conclude that either a WOC or a nominally compensated employee serving with the Agency would be subject to the Federal Employees Compensation Act, as amended.

3. As to the second question regarding the amount of benefits authorized by the Act, particularly in the instance of a person serving with no compensation. Section 1 of the Act provides that the United States shall pay compensation as thereafter specified for the ". . . death of an employee resulting from a personal injury while in the performance of a duty . . ." but not caused by willful misconduct, the intention of the employee to bring about the death or injury of himself or another, or the intoxication of the employee which is the approximate cause of his death. Section 10 provides that if death results from injury, the United States shall pay certain subsequently named persons in amounts and for periods thereafter set out. Section 11 provides additionally for the payment of funeral and burial expenses not to exceed $400 and for the shipment of remains when the employee dies overseas or away from his home or official station. Section 12 sets out the method of computing benefits. This is a rather involved delineation and, not being particularly relevant to the problem presented, is not set out here. However, germane is section 12(D), which provides that the previously listed methods of computation ". . . so far as practicable (shall) also be applied in the case of an employee serving without pay or at a nominal pay". It then goes on to provide that the average annual earnings of the employee which are used in the computation as a basis for determining benefits shall not exceed the compensation specified in the Classification Act of 1923, as amended, for the positions of CAF-15 or P-8 at the bottom of either grade, and finally that, if average annual earnings ". . . cannot reasonably and fairly be determined in the manner otherwise provided in this section, such average annual earnings shall be determined at the reasonable value of the service rendered but not in excess of $3,600 per annum".

4. As you know, the Classification Act of 1923, as amended, was amended by the Classification Act of 1949 (63 Stat. 1954, ____U.S.C.____ (1949)), as amended, section 601 of which abolished the CAF and P ratings and substituted therefore GS ratings. With this in mind, the significance of section 12(D), as explained in both the House and Senate Reports previously referred to and enlarged upon by Mr. Middleton, is this. In determining the compensation due the beneficiary or beneficiaries of a WOC killed in line of duty, his average annual earnings will be considered to be those of a person employed in similar work and at a salary appropriate to that work in the federal Government. As an example, if an outside attorney were to be brought into the office on a WOC basis to work in some specialized line of work similar to the work performed by an Assistant General Counsel and were to suffer death in a manner compensable under the Act, the benefits paid to his widow under Section 10(A) could be 45% of the salary of a grade 14 or 15 in the first step of either grade. In the event that this method cannot be applied with results which would be fair

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to both the WOC and the Government, then his average annual earnings shall be construed on a reasonable value basis and not to exceed $3,600 a year. Thus, if the work of the previously mentioned outside attorney was of such a character as not to be easily analogized to that of a specific GS grade, then its value to the Agency would be assayed at no more than $3,600 per year. The ice gets a bit thin here because the fact than an analogy was hard to draw would appear to indicate that the personal services rendered were not of "a kind similar to those of civilian officers and employees of the United States" within the requirements of section 40. However, the breadth of language used and the reports indicate that the law, as amended, is more concerned with providing a broad coverage for compensation than with the fulfillment of technical requirements as to entitlement. Mr. Middleton offered that this particular fact was put in for "$-a-year men" with the intent only of paying some nominal compensation in lieu of the nothing which would result from the strict application of the similar work requirement - it even being his view that the work performed by such person was not easily comparable, if at all, to that performed by any given group of federal employees. Again, the logic is lacking and the statutory language is fuzzy, so perhaps the legislative intent should control.

5. For your convenience, there are attached the Senate and House Reports for the 1949 amendments, the statute embodying those amendments, and a copy of the Act as it appeared in 1951. Relevant portions of all of these are outlined in red.

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